(A)

David Cohen affidavit No personal Knowledge

### IN THE CIRCUIT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

WAREHOUSE 1050 CORP.,
J AND J REFRIGERATION SUPPLY,
INC., and AME MANUFACTURING
CORP.,

Plaintiffs,

VS.

CASE NO. 09-36802CA11

WALTER J. WILLIAMS, FLORIDA SOL CORP., COMCAST CABLE COMMUNICATIONS HOLDINGS, INC., COMCAST CABLE HOLDINGS, LLC, FLORIDA POWER & LIGHT COMPANY, STATE OF FLORIDA, CITY OF MIAMI, MIAMI-DADE COUNTY, and JOHN & JANE DOES, 1-100,

水水

Defendants.

#### AFFIDAVIT OF DAVID L. COHEN

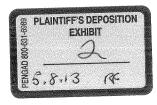
Before me, the undersigned authority, personally appeared, David L. Cohen, who upon first being duly sworn under oath, deposes and states as follows:

1.

My name is David L. Cohen. I am over the age of eighteen (18) years, am of sound mind, and I am competent to make this Affidavit in all respects. I make this Affidavit based upon personal firsthand knowledge.

2.

I am an Executive Vice President of Comcast Corporation.



I do not have any direct involvement with or supervision over the subsidiary that operates the Miami, Florida cable system, Comcast of Miami, Inc.

4

I have no direct personal knowledge regarding the installation of cable at 1050 N.W. 21st Street, Miami, Florida or the property damage alleged to have occurred from such installation.

5.

I have no direct personal knowledge of any repair work, damage estimates, claim handling, or any other issue involving the condition of said property or the present lawsuit.

6.

The only knowledge I have of the claim is <u>secondhand</u> knowledge obtained as a result of receiving letters from Elan Feldman, which I forwarded to the appropriate employees handling the claim.

7.

I have not been involved in any decision making with respect to this claim or lawsuit.

8.

The only time I ever spoke to Mr. Feldman was in 2007 when he unexpectedly confronted me at a business meeting I attended in Las Vegas, Nevada.

9.

This past holiday season, I unexpectedly received a Hanukkah basket delivered to my personal residence from Mr. Feldman.

Because of the size and nature of Comcast Corporation and its subsidiaries, if I were summoned as a deponent to testify in each case solely because of my status as a company executive, I would not have time to fulfill my duties as I could literally be in depositions every single day. It would be extremely disruptive to my responsibilities and provide no evidentiary value if I were to give depositions in cases where I had no involvement in the underlying claims, as is the case here.

11.

I have not participated in the above-captioned litigation and I am only filing this affidavit in support of a motion for protective order.

FURTHER AFFIANT SAYETH NOT.

David L. Cohen, Affiant

Sworn to and subscribed before me

This od day of Apri

My Commission Expires: Much

COMMONWEALTH OF PHINNSYLVANIA

NOTARIAL SEAL

CHRISTINE KLUMPP, Notary Public City of Philadelphia, Phila. County My Commission Expires March 2, 2014

(B)

Comcast's Opposition to petitions

Comcast already licenses CSN-NW and its Trail Blazers games for distribution by competing MVPDs and remains ready and willing, as it has been since CSN-NW's launch, to license CSN-NW and its Trail Blazers games to DirecTV, Dish Network, and Charter. But, as explained above, each of these distributors has chosen not to carry the network, even though they are being offered the same price that others in the market are willing to pay.

Moreover, there are already remedies available to distributors that believe that they are being treated unfairly (via a program access claim with the FCC) or that the price and terms being offered do not reflect the fair market value of CSN-NW's programming (via baseball-style arbitration under the *Adelphia Order*). Because none of these distributors has elected to avail itself of these remedies, it would appear that they simply are not interested in paying fair market value for carriage of the network.<sup>1056</sup>

CSN-NW shares the frustration of the Trail Blazers and local fans who cannot follow all of the team's game on TV because certain MVPDs have elected not to carry the network. This, however, has nothing to do with the transaction pending before the Commission.

#### J. Property Damage Allegation

Elan Feldman has filed an Opposition<sup>1057</sup> and Petition to Deny<sup>1058</sup> in this proceeding, but his concerns are not properly cognizable here. Because Mr. Feldman's grievance with Comcast

Claims that the baseball-style arbitration process is too costly for distributors such as DirecTV or Dish Network fall flat, given that both of those MVPDs have not been shy about utilizing that process in recent years to challenge the terms and conditions of carriage offered by other Comcast-affiliated RSNs based on allegations that the terms and conditions offered by such RSNs did not reflect the fair market value of such RSNs' programming.

See Elan Feldman, Opposition to Comcast Acquisition of NBC Universal Due to Comcast's Failure to Serve the Public Interest, Convenience and Necessity, MB Docket No. 10-56 (Apr. 19, 2010).

See Elan Feldman, Petition to Deny Comcast Acquisition of NBC Universal Due to Comcast's Failure to Serve the Public Interest, Convenience and Necessity, MB Docket No. 10-56 (June 16, 2010).

is long-standing and entirely unrelated to the proposed transaction, <sup>1059</sup> it cannot properly bear on the issues before the Commission and should be ignored. Mr. Feldman's complaint stems from a 2005 claim for alleged trespass and property damage which Comcast has tried in good faith to resolve, including by offering to engage in binding arbitration pursuant to Fla. Stat. § 44.104. Mr. Feldman instead filed a lawsuit in May 2009 that is still pending in the Florida courts. To the extent that Mr. Feldman suggests that Comcast lacks the requisite character qualifications to support approval of the proposed transaction due to the existence of this unresolved dispute, it strains credulity to suggest that a single alleged episode of trespass or property damage could bear on the question of fitness to hold a Commission license. <sup>1060</sup> In any event, to accord any weight to allegations in a pending lawsuit would be inconsistent with longstanding Commission precedent. <sup>1061</sup>

#### VII. CONCLUSION

The public interest benefits of this transaction have been demonstrated, and opponents' theories of competitive harm have been refuted. The proposed joint venture will serve the public

Indeed, in response to a formal complaint Mr. Feldman filed in February 2009, the Commission previously informed Mr. Feldman that his claims "are not matters that are within the jurisdiction of the Commission." See Letter from Steven A. Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau, to Elan Feldman (Mar. 10, 2009).

See, e.g., In the Matter of Policy Regarding Character Qualifications in Broadcast Licensing; Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Report, Order and Policy Statement, 102 FCC 2d 1179 ¶ 23 (1986) ("Policy Regarding Character Qualifications") ("We will be concerned with misconduct which violates the Communications Act or a Commission rule or policy, and with certain specified non-FCC misconduct which demonstrate the proclivity of an applicant to deal truthfully with the Commission and to comply with our rules and policies."); In the Matter of Application of Texas RSA 1 Limited Partnership For Facilities in the Domestic Cellular Telecommunications Service on Frequency Block B in Market No. 652, Texas 1 – Dallam RSA, Memorandum Opinion and Order, 7 FCC Rcd 6584 ¶ 8 (1992) (holding that "isolated violations . . . would simply not raise character qualifications questions").

See, e.g., In the Matter of Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, Order on Reconsideration, 25 FCC Rcd 3492 ¶ 8 n.24 ("The Commission's longstanding policy is that '[w]e will not take cognizance of non-FCC misconduct... unless it is adjudicated."") (quoting Policy Regarding Character Qualifications ¶ 48).

(C)

David Cohen signed as the person with personal knowledge under penalty of perjury

#### Declaration of David L. Cohen

I, David L. Cohen, Executive Vice President of Comcast Corporation, hereby declare under penalty of perjury that the facts asserted in the foregoing Opposition To Petitions To Deny And Response To Comments as to Comcast Corporation and its affiliates are true and correct, to the best of my knowledge, information and belief.

David L. Cohen

Executive Vice President, Comcast Corporation

Ind Und

July 21, 2010

# EXHIBIT (D)

Jury Verdict Pgs 1



IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

et al.,	CASE NO. 09-36802 CA (11) BHOUSE 1050 CORP.,			
	Plaintiffs,			
	IDA SÖL CORP., et al.	•	e a	
	Defendants.	·. /	BILED FOR KELONG	
	·	YERDICT FORM	OR R	
We, th	e jury, return the follow	ving verdict:	A 3: 14	
Trespa	ass	•	,	
1.	1. Did Comeast trespass by intentionally falling to remove the cable across Plaintiffs'			
	yes <u></u>	NO		
2.	Did Florida Sol Systems trespass by intentionally laying the wire across Plaintiffs' roof?			
	YES	ио"Х		
Neglig	ence	,		
3.	Was there negligence on the part of Comcast that was the legal cause of damage to Plaintiffs?			
	yes <u>X</u>	ио		
4,	Was there negligence on the part of Florida Sol that was the legal cause of damage to Plaintiffs?			
	YESX	NO		
	•	•		
If you	i answered "No" to all	of the questions above, then your verdi	ot is for Defendants on	

Plaintiffs' claims for trespass and negligence. Proceed no further except to sign and date this verdict form and return it to the Courtroom.

If you answered "Yes" to Question 1, 2, 3, or 4, then proceed to Question 5.

(E)

Smoking gun Admittance

Letter from Comcast attorney to their contractor admitting unlawfully on property and damage caused. Shows during the merger Comcast already knew it was not an allegation but a fact. Discovery later showed Comcast themselves installed the Cable

#### Moore Ingram Johnson & Steele

A LIMITED LIABILITY PARTNERSYOP WWW MUS.COM

IOHN H. MOORE STEPHEN C. STEELE WILLIAM R. JOHNSON ROBERT D. INGRAM<sup>†</sup> J. BRIAN O'NER. G. PHILLIP BEGGS ELDON L BASHAM DRAWOH L WHITTAM JERE C. SMITH CLAYTON O. CARMACK KEVIN B. CARLOCK ALEXANDER T. GALLOWAY HIT RODNEY R. McCOLLOCH SUSAN S. STUART DANIEL & LANDIS\*\*\*

HARRY R. TEAR III JEFFREY A. DAXE JOYCE W. HARPER AMY K. WEBER KIM A. ROPER TARA C. RIDOLE KELLL WOLK TANYA L. CROSSE 6 ROBERT W. BROWN II VICTOR P. VALMUS T. SHANE MAYES ANGELA H. SMITH OPHELIA W. CHAN DARRELL L. SUTTON

#### 192 ANDERSON STREET MARIETTA, GEORGIA 30060

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Kasi R. Whitaker Micholas J. Peterson\* TALLES O WALKER III CHRISTOPHER D. GUNNELS\* JENNIFER S. WHITE RYAN G. PRESCOTT RICARDO J. DOMEDEIROS BRETT A MILLER CHRISTOPHER C. MINGLEDORFF JAMES D. BUSCH\* COLE B. STINSON\*\*\* SUZANNE E. HENRICKSON ANGELA D. CHEATHAM CARRY F ATKINS" CHARLES PIERCE® BRANDON C. HARDY

STAYCE W. BURKHART CLAY'S, O'DANIEL GRAHAU E UCCONALD KARINE M. POLIS PHILLIP G. GOMBAR

OF COUNSEL: JOHN L. SKELTON, JR. T

- ALSO ADMITTED IN TH ALSO ADMITTED IN FL ALSO ADMITTED IN IN ALSO ADMITTED IN INC
- ADMITTED ONLY IN TH

November 9, 2007

Steven J. Lachterman, Esq. 848 Brickell Avenue, Suite 750 Miami, Florida 33131

Re:

Claim of Elan Feldman d/b/a J&J Refrigeration

Supply Co.; Claim No.: P50514307301

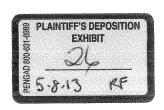
#### Dear Mr. Lachterman:

Please let this correspondence serve as a request for indemnification of our client, Comcast of Miami, Inc., from your client, Florida Sol Systems, Inc., for property damages incurred at 1050 N.W. 21st Street, Miami, Florida 33127, as a result of work performed by Florida Sol. We appreciate you taking the time in speaking with us about the matter earlier this week. We understand that you have had very little involvement with this situation up until now outside of our "voucher" letters requesting indemnification. Unfortunately, given recent developments and the history of this matter, we believe your client is at a significant risk of major exposure. As such, we would like to take this opportunity to lay out the "bare bones" of this matter and attempt to resolve the case before it takes a turn for the worse.

#### WORK PERFORMED BY FLORIDA SOL

On June 2, 2004, your client, Florida Sol, undertook to install an aerial cable wire at 1025 N.W. 20th Street, Miami, Florida 33127. This work was done pursuant to the Master Construction Agreement in place between Comcast of Miami, Inc. and Florida Sol Systems, Inc.

During installation, not only did Florida Sol run the cable wire physically across and touching the roof of J&J Refrigeration Supply Company located at 1050 N.W. 21st Street, Miami, Florida 33133, without the consent or knowledge of the owner of that establishment, Elan Feldman, it actually anchored the wire to the roof of building. A



#### MOORE INGRAM JOHNSON & STEELE

Steven J. Lachterman November 9, 2007 Page 2

copy of documents supporting the claim that Florida Sol performed this work is attached as Exhibit "A".

#### DAMAGES INCURRED BY MR. FELDMAN

As a result of Florida Sol's improper anchoring of the cable wire to Mr. Feldman's roof, Mr. Feldman and his business suffered significant damage to the structure and contents of the building. Ultimately, the anchor loosened causing the cable wire to whip in high winds causing the roof to tear and become structurally unsound. Unfortunately, much of this damage was caused just prior to heavy rains and winds associated with multiple hurricanes that came through the Miami area, further exacerbating the problem.

Mr. Feldman has provided an appraisal of the cost of repairing and/or replacing the damaged roof, as well as an estimate for the replacement cost of damaged or destroyed property contained within the building. A copy of this appraisal is attached as Exhibit "B" for your review. The total estimate for replacement value comes to \$554,843.28.

#### **DUTY TO INDEMNIFY**

The Master Construction Agreement entered into between Comcast of Miami, Inc. and Florida Sol Systems, Inc. on June 1, 2003, provides that Florida Sol shall indemnify and hold harmless Comcast from any and all claims, judgments, liabilities, and damages arising out of or in connection with the performance, negligence or other wrongdoing on the part of Florida Sol, its employees, agents, servants or representatives. Section 15 of the Contract entitled: "Indemnification", lays out Florida Sol's indemnification duties in detail. A copy of this contract is attached to this correspondence as Exhibit "C" for your reference.

It is clear that any and all damages sustained by Mr. Feldman and his business is the result of the work performed by Florida Sol and, as such, Florida Sol owes a duty to Comcast of Miami, Inc. to indemnify it for the claims now being asserted by Mr. Feldman.

According to our records, Florida Sol has been put on notice of this claim and Comcast's intent to request indemnification. A copy of previous correspondence regarding this matter is attached as Exhibit "D".

#### MOORE INGRAM JOHNSON & STEELE

Steven J. Lachterman November 9, 2007 Page 3

#### **CONCLUSION**

Mr. Feldman is becoming increasingly persistent that we resolve this issue. It is our belief that a formal lawsuit is imminent, complete with claims for punitive damages. It is not our intent to unduly burden your client with this matter; however, our investigation confirms that the installation of the cable wire was done without permission and damage was caused as a result. It may very well be that Mr. Feldman's claim that he sustained damages in excess of \$500,000.00 is exaggerated, but it is clear that he is entitled to some recovery in this matter.

In truth, we likely should have pursued your client for indemnification much more vigorously in the past. Nevertheless, we have now put this matter on the front burner in an attempt to protect our client, and ask that you do likewise. At this time, we respectfully request that Florida Sol provide indemnification to Comcast of Miami, Inc. for the full and total amount of Mr. Feldman's claims against Comcast of Miami, Inc. We further request that you reply to our demand within ten (10) days of the date of this correspondence.

We look forward to hearing from you and hope that we can reach an amicable resolution of this matter.

Sincerely yours,

/ JM /

XIII

WRJ/AHS:pag Encl.

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(F)

Section 621 of the Communications Act

interest in a program service as a condition for carriage on one or more of such operator's systems;

- (2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;
- (3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;
- (4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;
- (5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and
- (6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.
- (b) DEFINITION.--As used in this section, the term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

#### SEC. 617. [47 U.S.C. 537] SALES OF CABLE SYSTEMS.

A franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.

#### PART III--FRANCHISING AND REGULATION

#### SEC. 621. [47 U.S.C. 541] GENERAL FRANCHISE REQUIREMENTS.

(a)(1) A franchising authority may award, in accordance with the provisions of this title, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of

- section 635 for failure to comply with this subsection.
- (2) Any franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure--
  - (A) that the safety, functioning, and appearance of the property and the convenience and the safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;
  - (B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and
  - (C) that the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator.
- (3) In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.
  - (4) In awarding a franchise, the franchising authority--
  - (A) shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;
  - (B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and
  - (C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.
- (b)(1) Except to the extent provided in paragraph (2) and subsection (f), a cable operator may not provide cable service without a franchise.
- (2) Paragraph (1) shall not require any person lawfully providing cable service without a franchise on July 1, 1984, to obtain a franchise unless the franchising authority so requires.
- (3)(A) If a cable operator or affiliate thereof is engaged in the provision of telecommunications services--
  - (i) such cable operator or affiliate shall not be required to obtain a franchise under this title for the provision of telecommunications services; and
  - (ii) the provisions of this title shall not apply to such cable operator or affiliate for the provision of telecommunications services.
- (B) A franchising authority may not impose any requirement under this title that has the purpose or effect of prohibiting, limiting, restricting, or conditioning

#### Certificate of Service

I, Elan Feldman, do hereby certify that a copy of the foregoing Petition was served on the following persons by the means set forth below on the 6th day of May, 2017

FCC Filing system, email. Duplications of filings requested to be delivered through the FCC filing system and to the others not emailed but placed in the on these division list. To: The Commissioners, Marlene H. Dortch, Secretary Transaction Team, Office of General Counsel, the Media Wireline Competition and Enforcement Bureaus, Administrative Law Judges staff, Inspector General, Strategic Planning & Policy and Media Bureau, enforcement Bureau. Investigating and Hearing Division.

/s/	
Elan Feldman	

The FCC Electronic filing system https://www.fcc.gov/ecfs/filings

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